

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



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**Court of Appeals, District of Columbia**

**JANUARY TERM, 1900.**

No. 962.

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**3**

THE AMERICAN SECURITY AND TRUST COMPANY, AD-  
MINISTRATOR OF THE ESTATE OF BENJAMIN F.  
COOPER, DECEASED, APPELLANT,

*vs.*

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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**FILED JANUARY 16, 1900.**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1900.

No. 962.

THE AMERICAN SECURITY AND TRUST COMPANY, AD-  
MINISTRATOR OF THE ESTATE OF BENJAMIN F.  
COOPER, DECEASED, APPELLANT,

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# In the Court of Appeals of the District of Columbia.

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THE AMERICAN SECURITY & TRUST Co., Adm'r, &c.,  
Appellant,  
vs.  
THE PRUDENTIAL INSURANCE CO. OF AMERICA. } No. 962.

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a Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COM-  
pany, Administrator of the Estate of Ben-  
jamin F. Cooper, Deceased,  
vs.  
THE PRUDENTIAL INSURANCE COMPANY OF  
America. } No. 43355. At Law.

UNITED STATES OF AMERICA, } ss :  
District of Columbia,

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration and Notice to Plead.*

Filed Sep. 26, 1899.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COM-  
pany, a Corporation, Administrator of the  
Estate of Benjamin F. Cooper, Deceased,  
Plaintiff,  
vs.  
THE PRUDENTIAL INSURANCE COMPANY OF  
America, a Corporation, Defendant. } At Law. No. 43355.

1. The plaintiff, The American Security and Trust Company, a corporation, incorporated under the laws of the United States, and the administrator of the estate of Benjamin F. Cooper, deceased, having been duly appointed by said court and having duly qualified as such, sues the defendant, The Prudential Insurance Company of America, a corporation, incorporated under the laws of the State of New Jersey, for that heretofore, to wit, on the 30th day of September, 1895, the said defendant, which was then a corporation,

as aforesaid, and which was authorized to do business as an insurance company and was doing business as such, and had and still has an office and agent in the said District of Columbia, in consideration of a certain weekly premium thereafter to be paid by said intestate to said defendant, which said weekly premium was actually paid by said intestate to said defendant up to

the date of said intestate's death, as hereinafter mentioned, and in accordance with the terms and conditions of the policy of insurance hereinafter mentioned, made its policy of insurance in writing upon the life of the said intestate, whereby it, the said defendant, promised and agreed to pay unto the executors, administrators, or assigns of said intestate the sum of \$500.00 within twenty-four hours after acceptance at its, the said defendant's, office of satisfactory proof of the death of said intestate during the continuance of said policy; and that thereafter, to wit, on the fifth day of September, 1898, and during the continuance of the said policy, the said Benjamin F. Cooper died intestate in the city of Washington and District of Columbia, having duly paid to said defendant all of the weekly premiums due to said defendant, as aforesaid, and that proof of the death of the said intestate was furnished the said defendant in accordance with the terms and conditions of said policy and accepted by said defendant as satisfactory, and that thereupon and by reason of such death and of the promises and agreements of the said defendant, as aforesaid, the said sum of \$500.00 became due and was payable by the said defendant, in accordance with its said promises and agreements contained in the said policy of insurance aforesaid, and that thereafter demand was made by said plaintiff upon said defendant for payment of said sum of \$500, due said plaintiff, as aforesaid, but the said defendant refused and still continues to refuse to pay to the plaintiff the said sum of \$500, due plaintiff, as aforesaid, to the damage of the plaintiff, as administrator, as aforesaid, in the sum of \$500.00, with interest from September 15th, 1898; which amount plaintiff claims of said defendant, besides the costs of this suit.

3        2. The plaintiff, a corporation, as aforesaid, and as administrator, as aforesaid, also sues the defendant, a corporation, as aforesaid, for money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff's intestate to the defendant, and for work done and materials provided by the plaintiff's intestate for the defendant at its request, and for money lent by the plaintiff's intestate to the defendant, and for money paid by the plaintiff's intestate for the defendant at its request, and for money received by the said defendant for the use of the plaintiff and of the plaintiff's intestate, and for money found to be due from the defendant to the plaintiff and the plaintiff's intestate on accounts stated between them; and the plaintiff claims \$500.00, with interest from the 15th day of September, 1898, according to the particulars of demand hereto annexed, together with costs of suit.

DAVIS & TUCKER,  
*Attorneys for Plaintiff.*

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

DAVIS & TUCKER,  
*Attorneys for Plaintiff.*

4 *Particulars of Plaintiff's Demand.*

Filed Sep. 26, 1899.

WASHINGTON, D. C., *September 25th*, 1899.

Amount due to the American Security and Trust Company, administrator of the estate of Benjamin F. Cooper, deceased, from the Prudential Insurance Company of America on a policy of insurance issued by said insurance company to said Benjamin F. Cooper..... \$500.00

With interest from Sept. 15, 1898.

*Defendant's Pleas.*

Filed Oct. 7, 1899.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, Administrator of the Estate of Benjamin F. Cooper, Deceased, Plaintiff,	} At Law. No. 43355.
<i>vs.</i>	
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a Corporation, Defendant.	

Now comes the defendant, by its attorneys, Berry and Minor, and for pleas to the declaration filed in the above-entitled  
5 cause says:

First. It did not undertake and promise as alleged.

Second. It is not indebted in manner and form as alleged.

Third. And for a further plea the defendant says that the plaintiff ought not further to maintain its action, because defendant says that under the policy sued on in this case it, the defendant, promised, upon receipt of satisfactory proofs of death of the insured, to pay the amount of the policy, to wit, the sum of five hundred dollars, "to the executors, administrators or assigns of the person named as the insured in this (said) policy, unless settlement shall be made under provisions of article 2nd hereinafter contained;" and that in pursuance of said article 2nd, which is in words and figures following, to wit:

"The company may pay the sum of money insured hereby to any relative by blood, or connection by marriage of the insured, or to any other person appearing to said company to be equitably entitled to the same by reason of having incurred expense in any way on behalf of the insured for his or her burial, or for any other pur-

pose, and the production by the company of a receipt signed by any or either of said persons, or of other sufficient proof of such payment to any or either of them shall be conclusive evidence that such sum has been paid to the person or persons entitled thereto, and that all claims under this policy have been fully satisfied,"

said defendant, on the 15th day of September, 1898, paid to Charles B. Hale, the duly appointed guardian of Josephine N. Cooper, widow of Benjamin F. Cooper, deceased, the party insured under said policy sued on, the sum of five hundred dollars, according to the condition from and effect of said policy; and this the defendant is ready to verify; wherefore it prays judgment if the plaintiff ought further to maintain its action.

BERRY AND MINOR,  
*Attorneys for Defendant.*

Service of copy of above notice admitted this 7th day of October, 1899.

DAVIS & TUCKER,  
*Att'ys for Plaintiff.*

*Joinder of Issue upon First and Second Pleas; Demurrer to Third Plea, &c.*

Filed Oct. 10, 1899.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COM- pany, Administrator, Plaintiff,	} At Law. No. 43355.
vs.	
THE PRUDENTIAL INSURANCE COMPANY OF America, Defendant.	}

The plaintiff joins issue upon the first and second pleas of the defendant heretofore filed in the above-entitled cause.

The plaintiff says that the third plea of the defendant heretofore filed in said cause is bad in substance.

DAVIS & TUCKER,  
*Attorneys for Plaintiff.*

NOTE.—One of the matters of law intended to be argued upon the hearing of said demurrer to said third plea is that the payment alleged in said third plea to have been made by defendant to Charles B. Hale, guardian of Josephine M. Cooper, the widow of plaintiff's intestate, was not, under the terms of the policy of insurance sued upon and as set forth in said plea, a discharge of the obligations of the defendant under said policy.

DAVIS & TUCKER,  
*Attorneys for Plaintiff.*



Messrs. Berry & Minor, attorneys for defendant, 344 D St. N. W., city :

Please take notice that we will call up for argument the above demurrer in circuit court No. 2, Mr. Justice Bradley presiding, on Friday, October 20, 1899, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

DAVIS & TUCKER,  
*Attorneys for Plaintiff.*

8 Supreme Court of the District of Columbia.

FRIDAY, *November 17th*, 1899.

The court resumes its session pursuant to adjournment, Mr. Justice Bradley presiding.

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<p>THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, Administrator of the Estate of Benjamin F. Cooper, Deceased, Plaintiff,</p> <p style="text-align: center;"><i>vs.</i></p> <p>THE PRUDENTIAL INSURANCE COMPANY OF America, a Corporation, Defendant.</p>	}	<p>At Law. No. 43355.</p>
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This cause coming on to be heard upon the plaintiff's demurrer to the defendant's third plea, and having been heard, it is considered that said demurrer be, and it is hereby, overruled, with leave to the plaintiff to amend his declaration as he may be advised; whereupon the plaintiff, in open court, declines to amend, and prays that judgment be entered on said demurrer, which is ordered. Therefore it is considered that the plaintiff take nothing by its suit, and the defendant go thereof without day and recover against said plaintiff its costs of defense, to be taxed by the clerk, and have execution thereof.

9 *Order for Appeal.*

Filed Nov. 20, 1899.

In the Supreme Court of the District of Columbia, the 20th Day of November, 1899.

<p>AMERICAN SECURITY &amp; TRUST COMPANY, a Corporation, Administrator, Plaintiff,</p> <p style="text-align: center;"><i>vs.</i></p> <p>PRUDENTIAL INSURANCE COMPANY OF America, a Corporation, Defendant.</p>	}	<p>At Law. No. 43355.</p>
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The clerk of said court will enter an appeal on behalf of the plaintiff from the judgment heretofore rendered in the above-entitled cause and issue citation to the defendant.

DAVIS & TUCKER,  
*Attorneys for Plaintiff.*

10 In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COM- pany, Administrator, etc., vs. THE PRUDENTIAL INSURANCE COMPANY OF America.	} At Law. No. 43355.
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The President of the United States to the Prudential Insurance Company of America, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the clerk's office, supreme court of the District of Columbia, on the 20th day of November, 1899, wherein The American Security and Trust Company, administrator of the estate of Benjamin F. Cooper, deceased, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.	Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 20th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.
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JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 22 day of November, 1899.

BERRY & MINOR,  
*Attorneys for Appellee.*

11 *Memorandum.*

December 8, 1899.—Appeal bond filed.

12 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:  
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 11, inclusive, to be a true and correct transcript of the record in cause No. 43355, at law, wherein The American Security and Trust Company, administrator of the estate of Benjamin F. Cooper, deceased, is plaintiff and The Prudential Insurance Company of America is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe  
Seal Supreme Court my name and affix the seal of said court, at  
of the District of the city of Washington, in said District, this  
Columbia. 12 day of December, A. D. 1899.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No.  
962. The American Security & Trust Co., adm'r, &c., appellant,  
*vs.* The Prudential Insurance Co. of America. Court of Appeals,  
District of Columbia. Filed Jan. 16, 1900. Robert Willett, clerk.